

MEMORANDUM OF UNDERSTANDING

**IN-HOME SUPPORTIVE SERVICES (IHSS)
PROVIDER UNIT**

2003-2004

ORANGE COUNTY IHSS PUBLIC AUTHORITY

AND

**UNITED DOMESTIC WORKERS OF AMERICA,
NUHHCE, AFSCME, AFL-CIO**

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ORANGE COUNTY IN-HOME SUPPORTIVE SERVICES (IHSS)
PUBLIC AUTHORITY
AND THE
UNITED DOMESTIC WORKERS OF AMERICA
NUHHCE, AFSCME, AFL-CIO**

September 1, 2003- September 30, 2004

ARTICLE 1. PREAMBLE

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by the Orange County In-Home Supportive Services (IHSS) Public Authority (hereinafter referred to as "Public Authority") and the United Domestic Workers of America, NUHHCE, AFSCME, AFL-CIO (hereinafter referred to as "Union") as a result of collective bargaining regarding the wages, hours, and terms and conditions of employment which are to be in effect during the period September 1, 2003 through September 30, 2004 for employees in the IHSS Provider Unit. This agreement shall be in compliance with the Employer-Employee Relations Resolution of the Orange County IHSS Public Authority except as otherwise provided in Sections 12300 and 12301.6 of the State of California Welfare and Institutions Code, as amended. The Union and the Public Authority acknowledge that the relationship between the Public Authority and the employees in the IHSS Provider Unit, who are individual providers, is governed by state law, specifically Welfare and Institutions Code Section 12301.6, that this relationship is unique, and that the Public Authority does not employ or manage the IHSS Providers in the role of a traditional employer and that the IHSS recipients (Consumers) remain the employer for the purposes of hiring, firing, and supervising the work of any independent provider providing services to them. IHSS recipients may also train providers regarding their individual needs.

Unique Nature of Services

The Public Authority and the Union also recognize and appreciate the unique nature of the services rendered by IHSS Providers, who provide valued services to IHSS recipients. The special relationship between the provider and the recipient of service is deserving of the parties' sincere respect and appreciation.

ARTICLE 2. UNION RIGHTS

Section 1. Recognition

The Orange County IHSS Public Authority recognizes the United Domestic Workers of America, NUHHCE, AFSCME, AFL-CIO, as the exclusive representative of the In-Home Supportive Services Individual Providers covered by this agreement.

Section 2. Dues Deduction

- a. The Union has the exclusive privilege of dues deduction or agency fee deduction for all employees in the bargaining unit covered by this agreement. The Public Authority will advise the State Controller, as the payroll agent for its IHSS Individual Providers, to deduct all authorized membership dues, fees and/or assessments as required by the Union, or as voluntarily requested by the providers. The Public Authority will assist and cooperate with the Union and the State Controller to ensure the timely deduction of said dues, fees and/or assessments and the timely and accurate reporting to the Union of all such payments made pursuant to this agreement.
- b. To the extent State and Public Authority data processing permit, the Public Authority will provide the union periodically with up-to-date rosters of the members of the bargaining unit including: name, address, telephone number, social security numbers, hours paid per month and earnings. When or if it becomes possible, the Public Authority shall provide reports of earnings and hours after each pay period.
- c. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and the County and their respective boards, directors, officers, and employees from any costs, liabilities, attorneys fees, and damages arising out of any and all claims, demands, suits or other actions alleging that the Public Authority, County, or Union has misused or inappropriately disclosed Provider information obtained from the Public Authority. Provider information includes but is not limited to Providers' names, addresses, telephone numbers, social security numbers and earnings. The Union shall limit its use of information to lawful Union purposes.

Section 3. Bulletin Boards/Notices to Employees

a. Bulletin Boards

The Public Authority agrees to provide a suitable bulletin board, placed in every

Public Authority office in the County of Orange, upon which the Union may post its formal notices provided that material posted is not derogatory to the Public Authority or the County of Orange or its employees. Additionally, if the Public Authority decides to send a mailing to all IHSS Providers, the Public Authority will give the Union fifteen (15) business days advance notice of its intent and will allow the Union to include Union information in the mailer as long as the information is not derogatory as outlined above. The Union will provide the Public Authority with any materials to be included in a mailing at least ten (10) business days in advance, unless mutually agreed upon, of the mailing and cover any increased costs due to including the Union materials.

b. Union Access to Public Authority Buildings

The Public Authority agrees to admit to any of its Orange County offices the authorized representative(s) of the Union for purposes of adjusting grievances and conducting other legitimate, appropriate Union business related to enforcing and monitoring this agreement. The Union shall notify the Public Authority of the name of its authorized representatives upon ratification of this agreement.

c. Languages

The Public Authority shall provide the capability at its administrative office to communicate with IHSS Providers as required by Title VI of the Civil rights Act of 1964.

Section 4. Union Representation at Assessments

- a. Union representatives will not seek to conduct union business related to enforcement of this Agreement at the home of the recipient. However, Union representatives have the right to contact IHSS Providers at the addresses provided to them. In certain instances, union representatives may inadvertently visit a recipient's home, having been given the recipient's address as that of the IHSS Provider. Under such circumstances, the union representative may speak with the IHSS Provider after explaining the purpose of the visit and receiving permission from the Provider. If the address visited is the exclusive residence of the recipient, the union representative must also, wherever possible and practical, receive permission from the IHSS recipient to either (1) make an appointment at another location and/or time; or (2) continue with the meeting.
- b. Any determination regarding the amount of service hours a recipient shall be authorized is made by the Orange County Social Services Agency in consultation with the recipient and, when necessary, their provider of services.

Section 5. Union Stewards

- a. The Public Authority will recognize up to one Union steward for every one hundred (100) bargaining unit members.
- b. The Public Authority will recognize up to ten (10) stewards designated Senior Stewards.
- c. The Public Authority will recognize up to five (5) stewards designated as District Representatives.
- d. All such stewards, Senior Stewards and District Representatives shall be selected by the Union. The Union will provide a list of IHSS Providers in these positions to the Public Authority on a quarterly basis.

Section 6. Registry List

The Public Authority shall provide to the Union on a monthly basis a list of all Providers, and potential Providers, on the IHSS Provider registry. Such roster shall include the name, address and telephone number of each person on the registry.

ARTICLE 3. PUBLIC AUTHORITY RIGHTS

- a. Unless otherwise specified in this Memorandum of Understanding, the Public Authority retains the exclusive right to determine the merits, necessity or organization of any service or activity and to determine the methods, means and personnel by which its operations are to be conducted; to determine its mission, and that of any constituent subsections, committees, and other related work groups, to add or delete names from the registry (in accordance with Section B below) and to make all necessary actions to carry out its mission in emergencies.
- b. If an existing bargaining unit member's name were to be deleted from the registry, the Public Authority will notify the member and the union of this action, along with their right to appeal the decision, in writing within ten (10) business days. The member may exercise the following steps to appeal the decision:
 - 1. Request, in writing, the reasons for this action within ten (10) business days of receiving their notice.
 - 2. Within ten (10) business days of receiving the reasons for the action as outlined in Subsection A. above, the member may submit, in writing, an appeal to the Public Authority Executive Director. The Executive Director will meet with the member and/or their representative to consider the appeal. The Executive Director will render a decision in writing within ten (10) business days of receiving the appeal.
 - 3. Within ten (10) days of receiving the decision of the Executive Director, the member and/or their representative may request an impartial mediation through the State Mediation and Conciliation Service. Mediation shall be the final step of this appeals process.

ARTICLE 4. CONSUMER RIGHTS

- a. The Union and the Public Authority recognize the right of consumers, as established by law and by the Ordinance creating this Public Authority, to hire, fire and supervise the work of any in-home supportive services personnel providing services to them as well as to train such individuals in the manner in which those services are to be provided.
- b. The Union shall neither seek nor receive information from the Public Authority regarding the name, address, phone number, or any other personal information regarding consumers. Union representatives and IHSS Providers shall maintain strict standards of confidentiality regarding consumers and shall not disclose personal information pertaining to consumers obtained from any source unless the disclosure is compelled by the legal process or otherwise required by law. The consumer may consent to limited disclosure of information described herein and such consent may be withdrawn at any time for any reason.

ARTICLE 5. LABOR-MANAGEMENT RELATIONS COMMITTEE

- a. The Public Authority and the Union recognize the importance of maintaining an effective working relationship in order to fulfill the mission of the IHSS program and provide quality, reliable care to all clients/consumers. Both parties recognize their responsibility to address any program matter that might affect this goal.
- b. The Public Authority and the Union shall establish a Labor-Management Relations Committee. The purpose of the Committee shall be to consider and, when agreed upon, take action on matters affecting the relations between the parties and recommend measures to improve client care and the IHSS program. The committee shall not engage in negotiations, consider matters properly the subject of a grievance or an individual matter.
 - 1. Each party shall select their own participants for the Committee. However, either party may request the removal of a participant from the other group if that participant becomes too disruptive to the work of the Committee.
 - 2. The Committee shall be composed of up to eight (8) Union representatives and up to eight (8) Public Authority representatives or their designee. Recommendations of the committee shall be decided upon by a show of consensus and not by majority vote.
 - 3. The Committee will be co-chaired by one of the Union representatives and one of the Public Authority representatives.
 - 4. The Committee may meet quarterly, or as frequently as agreed to by the parties, but shall convene no less than twice per calendar year.
 - 5. Minutes from committee meetings will be prepared by the Public Authority and the Union, with alternating responsibility, within thirty (30) days of each meeting.
 - 6. The Public Authority and the Union will address each recommended item within a reasonable amount of time or as agreed to by the parties.
 - 7. Employee Committee members serve on a voluntary basis and will receive no remuneration from the Public Authority for their participation.

ARTICLE 6. GRIEVANCE PROCEDURE

Section 1. Definition

From time to time there may be differences and misunderstandings about the interpretation and application of the terms of this Agreement. Both parties agree that these differences and/or misunderstandings should be resolved promptly and, whenever possible, through informal means of communication between employees and the Public Authority. The Union will encourage bargaining unit members to discuss and resolve their concerns directly with appropriate Public Authority staff as the first step in addressing any work-related problem in order to prevent the need for a formal grievance. However, it is also acknowledged that occasions may arise in which informal means are inadequate to resolve work-related disputes concerning the interpretation or application of this agreement.

A grievance is hereby defined as a claim by an employee, a group of employees or the Union covered by this agreement involving an alleged violation of a provision of this Agreement by the Public Authority. Participation in the grievance procedure in any capacity shall be solely on the Provider's own time, and shall not be treated as within any IHSS Recipient's allocated service hours, or as paid time.

The grievance procedure shall not apply to matters over which the Public Authority has no jurisdiction, consumer rights or regarding the County of Orange.

Section 2. Grievance Procedure Steps

All grievances shall be handled in the following manner:

Step one: The employee/Union shall meet and present her/his grievance to the Public Authority designee within ten (10) working days of the alleged violation; The Public Authority designee will respond to the grievance, in writing, within fourteen (14) days of this meeting.

Step two: If no settlement is reached in Step one, the grievance shall be submitted to the Executive Director of the Public Authority within ten (10) working days from the Step one response. The Executive Director, within seven (7) working days, shall meet with the employee/Union to discuss the grievance. The Executive Director will respond to the grievance, in writing, within ten (10) working days of this meeting.

Step three: If no settlement is reached in Step two, within ten (10) working days after the step two grievance response is received, the employee/Union shall have the right to request an impartial mediation through the State Mediation and Conciliation Service. The mediator will meet with the parties to attempt to resolve the grievance and the parties shall share any mediation costs equally.

Step four: In the event the grievance is not resolved by mediation, the

grievance may be submitted for arbitration within ten (10) working days of the mediation meeting. No grievance may proceed to arbitration until an attempt to resolve the matter has been made through mediation at Step three of this procedure.

Section 3. General Provisions for Arbitration

- a. In the event that the dispute proceeds to arbitration the parties shall make a good faith effort to agree on an arbitrator. If the parties are unable to agree on a arbitrator within ten (10) working days from receipt of the arbitration request, the parties shall request a list of seven (7) arbitrators from the State Mediation and Conciliation Service and shall meet to alternatively strike the names from the list of arbitrators until, through process of elimination, only one name remains.
- b. No less than ten (10) working days prior to an arbitration hearing, the parties shall exchange any documentary evidence that will be used during the course of the arbitration hearing.
- c. The parties shall share the costs of the arbitrator equally.
- d. At the hearing, both parties shall have the right to be heard and to present evidence. The following rules shall apply:
 - 1. Oral evidence shall be taken only under oath.
 - 2. Each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination. If the employee does not testify on his or her own behalf, the employee may be called and examined as if under cross-examination.
 - 3. The Public Authority shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.
- e. The decision of the arbitrator shall be binding on all parties.
- f. The arbitrator may sustain, modify or rescind an appealed action. If the arbitrator decides to modify or rescind the action, any monetary award will be limited to any actual losses of pay or benefits by the employee(s). No claim shall be awarded for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance.

ARTICLE 7. ORIENTATION AND TRAINING

The Public Authority will inform bargaining unit members of training classes that are designed to offer activities to enhance the skills of IHSS Providers and to ensure ongoing access to appropriate and relevant information and training necessary to provide quality of care to IHSS recipients.

The Labor Management Relations Committee will develop an orientation meeting for new IHSS Providers, which shall be optional, and will also develop an informational packet for all bargaining unit members (in languages as required by Title VI of the Civil Rights Act of 1964) to explain various items important to the work of the IHSS provider. These items would include, but are not limited to hours/assessments, services, rights, rules, time card instructions, contact numbers and complaint/action forms. The Public Authority will also allow the Union to include in the packet of information Union contact information including Union website address.

The Public Authority agrees to work with the Union within the Labor Management Relations Committee to jointly pursue outside sources of additional funding that may be used to establish training and development programs for bargaining unit members, including the prospect of paid training for skill development and career enhancement. The Public Authority will pursue these activities, as its time availability makes practical and shall not be responsible for guaranteeing the receipt of any such funding or for the outcome of any such grant seeking efforts.

ARTICLE 8. AGENCY SHOP

Section 1. Purpose

The Public Authority and the Union mutually understand and agree that all affected employees have the option to join or not join the Union. It is the purpose of this MOU to establish fair and equitable procedures for the determination of any agency shop arrangement which may be properly approved by employees in the Home Care Workers Unit represented by the Union and to protect the rights and privileges of the employees, the Union and the Public Authority.

Section 2. Petition and Secret Ballot Election

a. Concurrent Agency Shop and Contract MOU Election (Single Ballot)

Agency Shop shall be implemented for the Home Care Workers Unit only following the certification of a secret ballot election by mail, conducted by the State Mediation and Conciliation Service (SMCS), in which a simple majority of those voting elect to ratify the contract/implement an agency shop. Such election shall be conducted in accordance with procedures established by the SMCS. The agency shop approval and contract MOU ratification election shall be conducted concurrently in one mailing with one color-coded ballot to be returned in one envelope. A notice explaining the obligations of Agency Shop, specifying information sufficient to give an understanding of Agency Shop requirements, shall accompany the Ratification/Agency Shop ballot.

b. Certification of Election Results, Objections

The State Mediation and Conciliation Service shall investigate any objections to the conduct of the election and decide matters pertaining to any challenged ballots.

Section 3. Employee and Union Rights and Responsibilities

a. Implementation of Agency Shop

If the ratification/agency shop election is certified, all Providers in the IHSS bargaining unit must either become and remain members of the Union and pay Union dues, or pay an agency fee to the Union in an amount that does not exceed that which may be lawfully collected. Such dues or fees shall be deducted from the employee's paycheck on a monthly basis starting the first day of the month following completion of thirty (30) days of employment, subject to the limitations and practices of the State Controller's payroll system.

b. Employees' Rights of Conscientious Objection

An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee must present a written declaration to the Union and the Public Authority that he/she qualifies for this exemption. The employee shall be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, non-labor charitable fund exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code, chosen by the employee from the following list of funds agreed to by the parties:

Vietnam Veterans of Orange County

Dayle McIntosh Center

Meals on Wheels

Alzheimer's Association of Orange County

Orangewood Children's Foundation

c. Union Duty of Fair Representation

The Union agrees that it has a duty to provide fair and non-discriminatory representation to all Providers in the bargaining unit regardless of whether they are members of the Union or not.

d. Union Financial Report

If requested, the Union shall provide the Public Authority Executive Director with annual copies of the Union financial report as required by law.

Section 4. Union Indemnification

The Union shall indemnify, defend, and hold the Public Authority harmless against any and all claims, demands, suits, orders, or judgments, or any other forms of liability that arise out of or by reason of this article, or action taken or not taken by the Public Authority under this article. This includes, but is not limited to the Public Authority's attorney fees and costs.

ARTICLE 9. PAYROLL

Section 1. Payroll

To promote a timely and accurate payroll system, the Public Authority and the Union will utilize the Labor Management Relations Committee to identify causes and solutions to on-going problems resulting in late, lost or inaccurate paychecks and related payroll issues. When the causes of problems are outside the direct control of the Public Authority, the Public Authority and the Union agree to work cooperatively to create solutions by bringing the problems to the attention of the responsible agencies and working with those agencies to seek and implement appropriate solutions.

Section 2. Direct Deposit

In order to ensure that employees receive their paychecks in a timely manner and to avoid late, missing, delayed or lost paychecks, the Public Authority will cooperate with the establishment of a system to be developed by the State Controller to direct deposit IHSS Providers' paychecks into their bank accounts once this option has been made available by the State Controller. This service will be optional and made available at no cost to the employee.

ARTICLE 10. WAGES

Wages for all IHSS Providers covered by this agreement shall be increased to \$8.00 per hour for the entire period of this agreement subject to Article 12, Section 2.b.

ARTICLE 11. HEALTH INSURANCE

In recognition of the importance of health care related benefits to IHSS Providers and the direct relationship between the health of these providers and their ability to provide care for the recipients they serve, both parties agree to work towards the development of a Union Health Care Trust Fund to establish health care benefits. The Public Authority will fund the trust as follows: Sixty-Cents (\$.60) per hour will be paid into the trust fund for all Orange County IHSS Provider hours worked each month beginning January 1, 2004.

The trust fund will be established as soon as possible and no more than ninety (90) days from the conclusion of negotiations. An equal number of trustees from UDW and the Public Authority will be appropriately seated to establish IHSS Provider eligibility criteria and further guidelines for the development and implementation of the actual health care plan.

ARTICLE 12. GENERAL PROVISIONS

Section 1. No Strike/No Lockout

During the term of this MOU, the Union, its members and representatives, agree not to engage in, authorize, sanction or support any strike, slowdown, stoppage of work, curtailment of production, or refusal to perform customary duties. The IHSS Public Authority agrees not to lockout members during the term of this MOU.

Section 2. No Increase in County Share of Cost

- a. If the State approves an amount less than the full funding, the County's financial contribution is capped at a level determined by the State/Federal/County shares of IHSS provider wages and benefits as described within and pursuant to Section 12306.1 of the Welfare and Institutions Code, as that Section existed on the effective date of this agreement. Should the state and/or Federal sharing ratio of the IHSS wages or benefits be reduced, then the County's overall contribution will not increase.
- b. Any wage or benefit increases for IHSS Providers outlined in this agreement will not go into effect until the State gives approval of the Public Authority rate and completion of the required State programming of Case Management Information and Payrolling System (CMIPS) to reflect such wage or benefit increases.

Section 3. Modification

No provision or term of this agreement may be amended, modified, altered or waived except by written agreement between the parties hereto.

Section 4. Savings Clause/Severability

In the event that any Article, Section or portion of this Agreement is declared invalid by a court of competent jurisdiction or is in contravention of any applicable law the remaining provisions of this Agreement shall not be invalidated thereby and shall remain in full force and effect.

Section 5. Sole and Entire Agreement

- a. This Agreement, together with any appendices, concludes all collective bargaining between the parties, constitutes the sole and entire agreement between the parties and supersedes any prior agreements or understandings, oral, written, express or implied, or practices by the Public Authority with regard

to bargaining unit members.

- b. The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not otherwise prohibited by law and that the understandings arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Section 6. Waiver

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of any such breach or condition.